IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-91

R. W. JONES, SR., et al.,

Petitioners,

vs.

CHARLES T. WOLF, et al.,

Respondents.

BRIEF AMICUS CURIAE OF THE GENERAL COUNCIL ON FINANCE AND ADMINISTRATION OF THE UNITED METHODIST CHURCH

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I.

INTEREST OF AMICUS AND INTRODUCTION

The General Council on Finance and Administration of The United Methodist Church ("GCFA"), an Illinois corporation not for profit, has among its concerns the safeguarding and protection of certain legal interests of The United Methodist Church ("UMC"), an international Protestant religious denomination and movement with approximately 10 million members and 43,000 local churches.[1]

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[1] GCFA's discretion with regard to legal matters derives from Par. 907(4) of *The Book of Discipline* of The United Methodist Church. *The Book of Discipline* contains the constitution and basic legislation of United Methodism and constitutes the pronouncement of the highest authority or judicatory in the denomination. It is the evolution of almost 200 years of Church law and usage.

It files this Brief *Amicus Curiae* with the consents of counsel for the parties pursuant to Rule 42 (2) of the Rules of this Court. Copies of such written consents are attached as appendices hereto. For the reasons hereinafter stated, GCFA believes the decision of the Georgia Supreme Court in the instant case seriously impairs constitutionally protected religious freedoms. It urges reversal.

While the United Methodist polity is less unified and authoritarian than that of Presbyterianism, lying midway on the spectrum between the congregational and strictly hierarchical polities, UMC is nevertheless a "connectional" church. By tradition, United Methodism has sought to uphold the continued use of local church properties for general denominational purposes and the avoidance of misappropriation of such properties by local factions or dissident groups. Accordingly, while titles to local church properties in United Methodism are generally held by or subject to the direction of the respective boards of trustees of the individual incorporated or unincorporated local churches, *The Book of Discipline* includes a trust clause, the purpose of which is to insure the ongoing local use of such properties by the regularly constituted ministers and members of UMC.

Periodically, appropriate officials at the Annual Conference level[2] of UMC have found it necessary to litigate to uphold such trust provision against schismatic attempts to apply local church property to factional uses. Because of the presence of such trust clause, Methodist property cases have not typically involved inquiry into or enforce-

[2] The annual conferences are the fundamental constitutional bodies of United Methodism operating within prescribed geographical areas in the United States and abroad. They are in some respects comparable to Presbyteries, although United Methodist units, in general, are not layered vertically in an ascending order of authority as in Presbyterianism. Instead, the United Methodist polity is relatively decentralized and confederated in character.

ment of the decisions of church tribunals as in many of the Presbyterian cases. See, eg., *Brady* v. *Reiner*, 198 S.E. 2d 812 (W.Va. 1973). However, the courts have uniformly given cognizance to these internal arrangements within United Methodism for the protection of properties thereby deferring to ecclesiastical law according to principles broadly enunciated in *Watson* v. *Jones*, 80 U.S. (13 Wall) 679 (1871) and *Kedroff* v. *St. Nicholas Cathedral*, 344 U.S. 94 (1952). Connectional denominations such as United Methodism continue to rely upon a strong and unbroken application of such principles, as most recently enunciated in *Serbian Eastern Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696, 49 L. Ed 2d 151 (1976).

II.

ARGUMENT

This Court's decision in *Serbian Diocese* identifies two important values which must be kept paramount in civil court cases involving ecclesiastical questions: (1) abstention from "extensive inquiry . . . into religious law and polity . . . ." (426 U.S. at 709); and (2) in the case of churches falling within the broad category of "hierarchical" polity, deference to the decision of the highest religious tribunal which dealt with the disputed matter (426 U.S. 720). While these values may, in a given case, seem to present a court with conflicting considerations (particularly where limited review of church documents is necessary to identify the tribunal to which deference is to be given), it is clear that the two concepts are essentially harmonious in their ultimate purpose. By deferring to ecclesiastical tribunals, the courts may avoid being drawn deeply into the thicket of doctrinal and ecclesiastical matters. This aim was aptly stated by Mr. Justice Brennan in *Serbian Diocese* where he noted as follows at 426 U.S. 709:

> ". . . where resolution of the disputes cannot be made without extensive inquiry by civil courts into religious

> law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them, in their application to the religious issues of doctrine or polity before them."

In reaching its decision in the case at bar, the Georgia Supreme Court cannot have been mindful of the teachings of *Serbian Diocese*. Indeed, there is no indication in its opinion that *Serbian Diocese* was given even cursory consideration. The controlling facts were these: (1) The Presbyterian Church in the United States ("TPCUS") is a denomination falling generally within the broad "hierarchical" classification; (2) Vineville Presbyterian Church, at the time of the events here in question, was a sub-unit within the Augusta-Macon Presbytery of TPCUS; and (3) a regularly constituted tribunal (the "Commission") dealt with the schism in the Vineville church and ruled in favor of the loyalist minority, declaring it to be the true congregation of such church. Notwithstanding the clarity of these controlling facts and the blueprint for decision which *Serbian Diocese* would have afforded, the Georgia court adopted a "neutral principles" rationale whereby it disregarded all connectional church considerations and, in effect, treated the Vineville church as a congregational unit. It decided the case as if it were merely a quiet title suit wholly outside of the religious area.

We respectfully submit that the Georgia Court's use of a "neutral principles" rationale to convert this case into a mere title search is error. It is an over-reaction to this Court's teachings on that subject in *Presbyterian Church* v. *Hull Memorial Presbyterian Church,* 393 U.S. 440, 21 L.Ed. 2d 658 (1969) and *Maryland and Virginia Eldership of the Churches of God* v. *Church of God at Sharpsburg,* 396 U.S. 367, 24 L.Ed. 2d 582 (1970). It is also a misuse and violation of those teachings.

In *Hull Memorial, supra,* this Court, in considering a similar Presbyterian property dispute, specifically disapproved of the Georgia Supreme Court's adherence to a "departure from doctrine" limitation on the implied trust theory of church property protection. Although this Court took care to note that only the "departure-from-doctrine *element* of the Georgia implied trust theory" was impermissible (393 U.S. at 450) the Georgia Court, on remand, and in the instant case, erroneously viewed *Hull Memorial* as mandating the total abolition of the concept of the implied trust.[3]

Similarly erroneous is the Georgia Court's overapplication of dictum in the Concurring Opinion of Mr. Justice Brennan in *Maryland and Virginia Eldership, supra,* 396 U.S. at 368 et seq. There, Mr. Justice Brennan observed that a given religious dispute might be resolved by a number of possible approaches, all of which would enable courts to avoid searching interpretations of church law and usage. One of the approaches identified was that of "neutral principles of law". 396 U.S. at 370. The Georgia Supreme Court apparently saw this language as creating a new *ratio decidendi* optionally available to civil courts in *any* religious property dispute and enabling the courts to ignore all connectional considerations which heretofore have been accorded respect in the resolution of such disputes.

In short, the Georgia Supreme Court, erroneously interpreting *Hull Memorial* and *Maryland and Virginia Eldership,* has totally repealed the doctrine of implied trust (as well as the respect for connectional churches which is inherent in that doctrine) and in the name of "neutral

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[3] This is not to suggest that the relief sought by Petitioners is dependent upon a renewed application of the implied trust doctrine in the instant factual situation. Indeed, Petitioners have disclaimed any such reliance. It is important, however, to note the Georgia Supreme Court's position on this issue as an element of its current orientation regarding church property cases.

principles" has embarked upon a wholly mechanical "legal title" approach. Such a doctrine, if upheld by this Court, would ultimately mean that the entire spectrum of religious polities and faiths would be reduced to a congregational form for resolution of all church property questions. All cases would then turn on a review of deeds and local majority rule. This *amicus* is confident that this Court will not countenance such a result.

III.

CONCLUSION

The continued viability of *Watson* and its progeny, particularly *Serbian Diocese,* is of pressing importance to all major "establishments of American religion." An overly narrow reading of *Hull Memorial* and *Maryland and Virginia Eldership* regarding "neutral principles" would preclude judicial knowledge of and adherence to a church's fundamental law and/or decisions of its highest judicatory, leaving the courts without a meaningful guide to decision. GCFA does not believe that these cases, in adverting to "neutral principles," established a new rule requiring courts to totally ignore the essential polity and internal governance of an established religion in the guise of applying irrelevant or at times totally contradictory "neutral principles." Accordingly, the decision below should be reversed.

Respectfully submitted,

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APPENDIX

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November 8, 1978

RECEIVED
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WITWER, MORAN, BURLAGE & ATKINSON

Samuel Witwer, Jr., Esq.
125 South Wacker Drive
Chicago, Illinois 60606

Dear Mr. Witwer:

I represent the Petitioners in <u>Jones v. Wolf</u>, No. 78-91, now pending in the Supreme Court of the United States. The purpose of this letter is to grant permission to The General Council on Finance and Administration of the United Methodist Church to file an amicus brief in that case in support of Petitioners.

Sincerely yours,

E. Barrett Prettyman, Jr.

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EBP:mda

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November 8, 1978

Mr. Sam Witmer, Jr.
Witmer, Moran, Burlage and Atkinson
125 South Wacker Drive
Chicago, Illinois 60606

RE: Jones vs. Wolfe
No. 78-91

Dear Mr. Witmer:

Please accept this letter as permission on behalf of the respondents to your filing a brief in the above-referenced case on behalf of the General Counsil on Finance and Administration of The United Methodist Church.

Yours sincerely,

Warren Plowden

W. WARREN PLOWDEN, JR.

WWPJR/sls